IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7952 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANJAY VAJUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR KR RAVAL for Petitioner

MR UR BHATT APP. for Respondent No. 1

RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/10/2000

ORAL JUDGEMENT

#. The petitioner came to be detained on 18.05.2000 by virtue of an order passed by the Police Commissioner,

Ahmedabad (hereinafter referred to as 'Detaining Authority') in exercise of power under section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as 'PASA Act') as his activities were found to be detrimental to public order.

#. Grounds of detention dated May 18,2000 indicate that the Detaining Authority recorded its subjective satisfaction about the activities of the detenu being detrimental to public order on the ground of involvement of the detenu in two offences punishable under sections 392 and 114 of Indian Penal Code registered with Bapunagar Police Station vide CR No.13 of 2000 and of Naroda Police Station vide CR No.232 of 2000. The Detaining Authority also took into consideration the statements of two anonymous witnesses in respect of two incidents that occurred on April 3,2000 and April 15,2000 and found that the detenu is a dangerous person. The two witnesses who stated about the incidents suffered from an apprehension of danger qua their person and property from the petitioner. The authorities therefore deemed it proper to exercise power under section 9(2) of the PASA Act and decided not to disclose the identity of these witnesses by claiming privilege. The Detaining Authority after considering the possibility of resorting to less drastic remedy came to the conclusion that it is not possible to resort to them and therefore recorded a satisfaction that preventive detention of the petitioner was the only remedy, that can be resorted to in order to immediately prevent him from pursuing his illegal activities which were, according to Detaining Authority, detrimental to public order.

#. The petitioner made representation to the State Government after detention which according to the petitioner has not been considered and replied to by the Government.

#. The petitioner challenges the detention on various grounds. Mr.Raval, learned Advocate appearing for the petitioner submitted that the subjective satisfaction recorded by the Detaining Authority and consequentally the order of detention stands vitiated on the ground that there is non application of mind on the part of the Detaining Authority. Mr.Raval submitted that the Detaining Authority has relied on two registered offences and two incidents in respect of which no offence is registered. If two registered offences are considered Mr.Raval submitted, that the authority has not considered the investigation papers properly and if that was done

subjective satisfaction could not have been arrived at. He has raised many contentions in respect of merits of the criminal case like untrustworthiness of the witnesses whose statements have been recorded during the course of investigation, possible error in identification of the accused and several other points touching merits of the criminal case. In this regard, it may be noted that none of the points raised by Mr.Raval indicate anything good enough to vitiate the subjective satisfaction recorded by the Detaining Authority. It need hardly be said that the case before this Court is of preventive detention and not punitive detention and this Court while hearing this petition does not sit in appeal over the order of detention passed by the Detaining Authority to decide whether there were sufficient grounds for subjective satisfaction or not. In such cases, the question of sufficiency or insufficiency of ground has not to be dealt with by this Court in exercise of power conferred under Article 226 of the Constitution of India.

#. It has however, to be observed that Mr.Bhatt,learned Addl.P.P. was at loss to indicate anything which could have satisfied the Detaining Authority about the activity of the detenu being dangerous or has disturbed the public order by virtue of his involvement of the said registered offences. There is nothing to indicate that there was any disturbance to public order in respect of two registered offences. They were more or less individual offences or incidents who had somethingt to do with law and order situation rather than public order situation. The subjective satisfaction on this ground, therefore, would stand vitiated.

#. So far as the other two incidents as narrated by anonymous witnesses are concerned they being grounds of detention it is required to be noted that the statements of these witnesses were recorded on May 16,2000 by the Sponsoring Authority. The statements were verified by the Detaining Authority on May 17,2000 and the impugned order of detention was passed on May 18,2000. Differently put the order was passed on the very next date on verification of statements. The Detaining Authority is required to record a subjective satisfaction to exercise power under section 9(2) of the PASA Act on exercising privilege by not disclosing identity of the witnesses. For this purpose, the authority has to undertake an exercise of examining correctness and genuineness of fear expressed by the witnesses qua the detenu. For that purpose, some contemporary material has also to be created and examined which is not the case here. Similar situation arose before the Division Bench

of this Court in case of Kalidas Chandubhai Kahar Vs. State of Gujarat and others reported in 1993(2) GLR Pg.1659. There also order of detention was passed on the next day on verifiction of the statement. The Division Bench observed that there was no sufficient time for the Detaining Authority to examine the possibility of exercising the power under section 9(2) of the PASA Act. Very similar situation is before this Court and therefore this Court has to conclude that there was no sufficient time before the Detaining Authority for subjective satisfaction after undertaking requisite exercise. This improper exercise of power under section 9(2) of PASA Act would adversely affect the detenu's right of making an effective representation envisaged in Article 22(5) of the Constitution of India, and therefore, his detention would stand vitiated.

#. Mr.Raval's contention that the representation made by the detenu on June 14,2000 has been dealt with by the Detaining Authority although it is addressed to the Government and that it has not been dealt with by the Government does not appear to be well founded. In this regard it may be noted that the representation was addressed to the Secretary, Home Department. It was routed through Detaining Authority. The Detaining Authority forwarded the same to the Government and communicated to the detenu on 26.06.2000 about the said onward transmission proposed to the Government. Mr.Raval's contention is that the Detaining Authority has applied its mind although the detention was approved by the Government and although the Detaining Authority had become functuous officio. Mr.Raval emphasised on sentence that indicated that the Detaining Authority had studied the representation. He, therefore, urged that there is non application of mind by the Detaining Authority. The Detaining Authority could not have done so as it had become functuous officio and therefore, right of the detenu envisaged under Article 22(5) of the Constitution is infringed. On going through that communication (Annexure 'C') it is found that it is true that the authority has stated that it has carefully considered the representation but it also indicates that no action is taken by the Detaining Authority. It has immediately forwarded the same to the Government for consideration. Even for deciding the line of action; the authority (in fact any receipt of a communication) has to consider the contents and thereafter decide as to whether what is required to be done and therefore mere observation in the communication that the authority has carefully considered the representation would not infringe the right of the detenu envisaged under Article

22(5) of the Constitution of India. It would have been the different case if the Detaining Authority had after considering the representation rejected the representation but that has not been done. On the contrary, this indicates that the Detaining Authority has taken action after proper application of mind over the representation. Hence, the contention of Mr.Raval,therefore, cannot be accepted.

#. From the foregoing discussions, it is clear that the detention of the detenu cannot be upheld and deserves quashing. The ground on which the subjective satisfaction is recorded by the Detaining Authority stands vitiated.

#. The petition is therefore allowed. The impugned order of detention No.PCB-DTN-PASA-136-2000 dated 18.05.2000 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside. Detenu Sanjay Vajubhai Patel of 59, Radha Krishna Society, Viratnagar, Odhav, Ahmedabad be set at liberty forthwith if not required in any other case. Rule made absolute. No costs.

Sd/-
(A.L.Dave, J)

m.m.bhatt